ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2021-0672; FRL-9558-01-R1]

Air Plan Approval; New Hampshire; Boston-Manchester-Portsmouth Area Second 10-Year Limited Maintenance Plan for 1997 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of New Hampshire. On July 29, 2021, the State submitted its 1997 ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Boston-Manchester-Portsmouth (Portsmouth) area. EPA is proposing to approve the Portsmouth area LMP because it provides for the maintenance of the 1997 ozone NAAQS through the end of the second 10-year portion of the maintenance period. The effect of this action will be to make certain commitments related to maintenance of the 1997 ozone NAAQS in the Portsmouth maintenance area part of the New Hampshire SIP and therefore federally enforceable.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR- at https://www.regulations.gov, or via email to rackauskas.eric@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1628, email *rackauskas.eric@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Summary of EPA's Action

Under the CAA, EPA is proposing to approve a Limited Maintenance Plan (LMP) for the Boston-Manchester-Portsmouth (Portsmouth) maintenance area for the 1997 ozone NAAQS, submitted as a revision to the New Hampshire State Implementation Plan (SIP) on July 29, 2021. The Portsmouth area 8-hour ozone nonattainment area includes 52 cities and towns with a combined population of 729,071 in Hillsborough, Merrimack, Rockingham and Strafford counties, in the southeastern-most portion of the state. On June 15, 2004, the Portsmouth area was designated as nonattainment for the 1997 ozone NAAQS. On March 4, 2013, the area was redesignated to attainment with that standard.

The Portsmouth area's LMP for the 1997 ozone NAAQS submitted by the New Hampshire Department of Environmental Services (DES) is designed to maintain the 1997 ozone NAAQS within these areas through the end of the second ten-year period of the maintenance period. We are proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NOx) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor and emergency department visits and hospital admissions for individuals with lung disease. Ozone exposure also increases the risk of premature death from heart or lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.[1]

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. 62 FR 38856 (July 18, 1997).[2] The EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA

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[1] See "Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone," January 6, 2010 and 75 FR 2938 (January 19, 2010).

[2] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

determined that the 8-hour standard would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a preexisting respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Southeast New Hampshire area as nonattainment for the 1997 ozone NAAQS, and the designations became effective on June 15, 2004. Under the CAA, states are also required to adopt and submit SIPs to implement, maintain, and enforce the NAAQS in designated nonattainment areas and throughout the state.

When a nonattainment area has three years of complete, certified air quality data that has been determined to attain the 1997 ozone NAAQS, and the area has met other required criteria described in section 107(d)(3)(E) of the CAA, the state can submit to the EPA a request to be redesignated to attainment, referred to as a "maintenance area".[3] One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation and must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the standard will be promptly corrected. At the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional ten years. CAA section 175A.

EPA has published long-standing guidance for states on developing maintenance plans.[4] The Calcagni memo provides that states may generally demonstrate maintenance by either

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[3] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignation. They include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[4] Calcagni, John, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (i.e., attainment year inventory). EPA clarified in three subsequent guidance memoranda that certain nonattainment areas could meet the CAA section 175A requirement to provide for maintenance by demonstrating that the area's design value[5] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future.[6] EPA refers to this streamlined demonstration of maintenance as a Limited Maintenance Plan (LMP). EPA has interpreted CAA section 175A as permitting this option because section 175A of the Act defines few specific content requirements for maintenance plans, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP, that have an approved LMP, have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, states seeking an LMP must still submit their section 175A maintenance plan as a revision to their state implementation plan, with all attendant notice and comment procedures.

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[5] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

[6] See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

While the LMP guidance memoranda were originally written with respect to certain NAAQS,[7] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[8] In this case, EPA is proposing to approve New Hampshire's LMP because the State has made a showing, consistent with EPA's prior LMP guidance, that the area's ozone concentrations are well below the 1997 ozone NAAQS and have been historically stable. New Hampshire DES has submitted this LMP for the Southeast New Hampshire 1997 ozone NAAQS areas to fulfill the second maintenance plan requirement in the Act. Our evaluation of the Southeast New Hampshire area 1997 ozone NAAQS LMP is presented below.

On March 2, 2012, New Hampshire DES submitted to EPA a request to redesignate the Portsmouth nonattainment areas to attainment for the 1997 ozone NAAQS. New Hampshire DES also provided EPA with additional information on September 21, 2012. This submittal included a plan to provide for maintenance of the 1997 ozone NAAQS in the Portsmouth nonattainment area through 2012 as a revision to the New Hampshire SIP. EPA approved the maintenance plan for the Portsmouth nonattainment area and the State's request to redesignate the Portsmouth nonattainment area to attainment for the 1997 ozone NAAQS on January 31, 2013 (78 FR 6741).

In conjunction with our approval of the Portsmouth nonattainment areas 1997 ozone Maintenance Plan covering the first 10-year maintenance period, we approved various regulatory provisions adopted by the State providing for the continued implementation of the control measures relied upon for attainment, and for the authority for state agencies to implement contingency measures should the area violate the standard again during this period.

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[7] The prior memoranda addressed: unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment areas for the carbon monoxide NAAQS.

[8] See, e.g., 79 FR 41900 (July 18, 2014) (Approval of second ten-year LMP for Grant County 1971 SO_2 maintenance area).

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (i.e., maintenance areas) for the 1997 standard no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[9] In *South Coast Air Quality Management District v. EPA*, the D.C. Circuit vacated EPA's interpretation that second maintenance plans were not required for 1997 NAAQS maintenance areas because of the revocation of that standard. *South Coast*, 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with 1997 ozone NAAQS maintenance areas still must comply with the requirement to submit maintenance plans for the second maintenance period. Accordingly, on July 29, 2021, New Hampshire submitted second maintenance plans for the Portsmouth area that show that the area is expected to remain in attainment with the 1997 ozone NAAQS through the last year of the second 10-year maintenance period, i.e., through the end of the full 20-year maintenance period.

III. New Hampshire's SIP Submittal

On July 29, 2021, New Hampshire DES submitted the Portsmouth area LMP to the EPA as a revision to the New Hampshire SIP. New Hampshire DES also provided additional information to EPA on December 23, 2021. The submittal includes the LMP and attachments. The plan and attachments include air quality data, emission inventory information, air quality monitoring information, and documentation of notice, hearing, and public participation.

IV. EPA's Evaluation of New Hampshire's SIP Submittal

A. Procedural Requirements

[9] *See* 80 FR 12315 (March 6, 2015).

CAA section 110(a)(2) and 110(l) require revisions to a SIP to be adopted by a state after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of a notice by prominent advertisement in the relevant geographic area of the proposed SIP revisions, at least a 30-day public comment period, and an opportunity for a public hearing.

New Hampshire DES published a notice of a 30-day comment period and notice for a public hearing for the LMP for the Portsmouth maintenance areas on the State's website. New Hampshire DES received no public comments, either written or oral. New Hampshire DES then submitted the Portsmouth area 1997 Ozone NAAQS LMP to EPA as a revision to the New Hampshire SIP. The process followed by New Hampshire DES in adopting the Portsmouth area 1997 Ozone NAAQS LMP complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.

B. Substantive Requirements

EPA has reviewed the Portsmouth maintenance area 1997 Ozone NAAQS LMP, which is designed to maintain the 1997 ozone NAAQS within the Portsmouth area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the requirements[10] and EPA's evaluation of how each requirement is met.

1. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on emissions of VOCs and NOx, as these pollutants are precursors to ozone formation. The

[10] See Calcagni memo.

Portsmouth area LMP includes an ozone attainment inventory for the Portsmouth area that reflects total emissions for every National Emissions Inventory (NEI) from 1996-2017. Tables 1 and 2 below contain the NEI data submitted by the State. The NEI is updated every three years. Additionally, though not technically required for a LMP, the tables include modeled emissions projections for 2023 and 2028. EPA notes that the modeled VOC emission estimates show a slight increase compared to actual measured emissions from 2017 NEI data, with a 12% increase from 2017 to 2023 for area sources and a 7% increase in non-road mobile sources for this same time. These are modeled projections, not actual emissions, and do not interfere with the State demonstrating an overall downward trend in total emissions during the maintenance period which continues in 2028.

Table 1 Nitrogen Oxides (NOx) [tons per year]

	1996	1999	2002	2005	2008	2011	2014	2017	2023	2028
Point	**20,690**	**16,170**	**9,786**	**12,068**	**6,969**	**5,887**	**4,343**	**2,691**	**3,362**	**2,975**
Area	**13,506**	**5,724**	**11,259**	**11,259**	**6,874**	**5,758**	**11,894**	**10,544**	**4,244**	**3,900**
Non-Road Mobile	**10,265**	**8,547**	**10,015**	**9,246**	**7,116**	**6,532**	**5,565**	**4,262**	**4,808**	**4,564**
On-Road Mobile	**45,984**	**41,873**	**38,799**	**29,750**	**29,308**	**17,243**	**16,292**	**11,036**	**6,355**	**4,539**
Total	**90,444**	**72,314**	**69,859**	**62,323**	**50,267**	**35,421**	**38,093**	**28,533**	**18,769**	**15,978**

Table 2 Volatile Organic Compounds (VOC) [tons per year]

Category	1996	1999	2002	2005	2008	2011	2014	2017	2023	2028
Point	**5,421**	**2,991**	**1,599**	**1,104**	**783**	**652**	**441**	**757**	**637**	**625**
Area	**38,766**	**55,921**	**61,554**	**36,105**	**23,335**	**20,352**	**18,560**	**17,017**	**19,029**	**18,955**
Non-Road Mobile	**18,177**	**18,468**	**21,950**	**21,255**	**19,415**	**15,094**	**12,598**	**8,510**	**9,197**	**8,812**
On-Road Mobile	**26,419**	**24,511**	**21,681**	**18,927**	**11,811**	**9,417**	**9,168**	**6,804**	**4,846**	**3,716**
Total	**88,783**	**101,891**	**106,784**	**77,391**	**55,344**	**45,515**	**40,767**	**33,088**	**33,709**	**32,108**

Based on our review of the methods, models, and assumptions used by New Hampshire DES to develop the VOC and NOx estimates, we find that the Portsmouth area 1997 8-Hour Ozone NAAQS LMP includes comprehensive, reasonably accurate inventories of actual ozone

precursor emissions and conclude that the plan's inventories are acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

2. Maintenance Demonstration

The maintenance plan demonstration requirement is considered to be satisfied in a LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the standard, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[11] These criteria are evaluated below with regard to the Portsmouth area.

a. Evaluation of ozone air quality levels.

To attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (e.g., below 85% of the standard, or in this case below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period.[12] Such a demonstration assumes continued applicability of PSD requirements, any control measures already in the SIP, and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.[13]

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[11] "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001.

[12] This LMP guidance can found here: https://www.epa.gov/sites/default/files/2016-06/documents/1995lmp-co.pdf

[13] As part of the Ozone Transport Region (OTR), the Portsmouth area is also subject to additional permitting requirements through nonattainment new source review (NNSR).

Table 3 presents the design values for each monitor in the Portsmouth area over the 2017-2019 period. As shown in Table 3, all sites have been well below the level of the 1997 ozone NAAQS and the most current design value is below the level of 85% of the NAAQS, consistent with prior LMP guidance.

Table 3 Ozone NAAQS Design Values (DV) [Parts per billion, ppb]

Design Value Period	Hillsborough County	Merrimack County	Rockingham County
2004-2006	**75**	**72**	**75**
2005-2007	**76**	**72**	**77**
2006-2008	**73**	**70**	**76**
2007-2009	**71**	**68**	**74**
2008-2010	**68**	**66**	**69**
2009-2011	**68**	**65**	**66**
2010-2021	**68**	**65**	**66**
2011-2013	**67**	**64**	**67**
2012-2014	**68**	**63**	**68**
2013-2015	**66**	**62**	**66**
2014-2016	**66**	**61**	**66**
2015-2017	**65**	**63**	**65**
2016-2018	**65**	**62**	**65**
2017-2019	**62**	**60**	**62**

Therefore, the Portsmouth area demonstration that the areas will maintain the NAAQS based on the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NOx emissions control programs, adequately provide for the maintenance of the 1997 ozone NAAQS in the Portsmouth maintenance areas through the second 10-year maintenance period (and beyond).

b. Stability of ozone levels.

As discussed above, the Portsmouth area has maintained air quality well below the 1997 ozone NAAQS over the past ten years. Additionally, the design value data shown within Table 2 illustrates that ozone levels have been relatively stable over this timeframe, with a modest downward trend. This downward trend in ozone levels, coupled with the relatively small

year-over-year variation in ozone design values, makes it reasonable to conclude that the Portsmouth area will not exceed the 1997 ozone NAAQS during the second 10-year maintenance period.

After New Hampshire completed the LMP for the Portsmouth area, EPA released the final 2018-2020 ozone design values. These values show a continued downward trend in ozone levels, with a 2018-2020 design value for the Portsmouth area of 0.063 ppm.[14]

3. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring network that New Hampshire DES operates and maintains, in accordance with 40 CFR part 58. This network is consistent with the ambient air monitoring network assessment and plan developed by New Hampshire DES that is submitted annually to EPA and that follows a public notification and review process. EPA has reviewed and approved the 2020 Ambient Air Monitoring Network Assessment and Plan.

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, New Hampshire DES's monitoring network in the Portsmouth area has been approved by EPA in accordance with 40 CFR part 58, and the area has committed to continue to maintain a network in accordance with EPA requirements. For further details on monitoring, the reader is referred to the "2020/2021 New Hampshire DES's Annual Network Plan" found at https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/r-ard-20-03.pdf, as well as EPA's approval letter for the 2020/2021 Annual Network Plan, which can be found in the docket for today's action. We believe New Hampshire's monitoring network is adequate to verify continued attainment of the 1997 ozone NAAQS in the Portsmouth area.

4. Contingency Plan

[14] For EPA's full design value report please see https://www.epa.gov/air-trends/air-quality-design-values

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or promptly remedy any NAAQS violations that might occur during the maintenance period. These contingency measures do not have to be fully adopted regulations at the time of redesignation. However, the contingency plan is an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a future violation of the NAAQS or some other trigger. The contingency plan should identify the measures to be expeditiously adopted and provide a schedule and procedure for adoption and implementation of the measures. The state should also identify specific triggers which will be used to determine when the contingency measures need to be implemented. While a violation of the NAAQS is an acceptable trigger, states may wish to choose a violation action level below the NAAQS as a trigger, such as an exceedance of the NAAQS. By taking action promptly after an exceedance occurs, a state may be able to prevent a violation of the NAAQS. In the unlikely event of a violation, New Hampshire would be required to adopt and enforce new measures to remedy the violation. Possible contingency measures identified by New Hampshire include the following:

- NOx controls for industrial, commercial, and institutional (ICI) boilers.
- VOC controls for emulsified and cutback asphalt paving.
- VOC controls for consumer products.

EPA proposes to find that New Hampshire's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of CAA section 175A.

V. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity

rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as "that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)).

All actions that would require transportation conformity determinations for the Portsmouth ozone maintenance areas under our transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 as a result of an adequacy finding for the LMP or approval of the LMP. (See 69 Fed. Reg. 40004, 40063 (July 1, 2004).)

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 40 CFR 93.112) and Transportation Control Measure (TCM) implementation in the conformity rule provisions (40 CFR 93.113). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in

accordance with the timing requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). EPA meets monthly with the New Hampshire Department of Transportation, New Hampshire DES, the Federal Highway Administration (FHWA), the Federal Transit Authority (FTA), and other partners to ensure the conformity guidelines in the New Hampshire SIP are followed (see 78 FR 71504 for EPA's most recent approval of New Hampshire's "Conformity" regulation).

VI. Proposed Action and Public comment

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the second 10-year LMP for the Portsmouth maintenance areas for the 1997 Ozone NAAQS, submitted by New Hampshire DES on February 18, 2020, as a revision to the New Hampshire SIP. We are proposing to approve the Portsmouth area LMP because we find that it includes an acceptable update of the various elements of the 1997 ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and essentially carries forward all of the control measures and contingency provisions relied upon in the earlier plan.

We also find that ozone design value for the Portsmouth area is sufficiently below the 1997 ozone standard to allow the State to submit a LMP and that the Portsmouth area 1997 Ozone NAAQS LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. We believe the Portsmouth area 1997 Ozone LMP to be sufficient to provide for maintenance of the 1997 ozone NAAQS in the Portsmouth area over the second 10-year maintenance period (though 2026) and to thereby satisfy the requirements for such a plan under CAA section 175A(b).

EPA is proposing to approve the Portsmouth Area's Second 10-Year Limited Maintenance Plan for 1997 Ozone NAAQS into the New Hampshire SIP. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this *Federal Register*.

VII. **Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 18, 2022.

David Cash,
Regional Administrator,
EPA Region 1.

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